

SETTLEMENT AGREEMENT

The City of Fresno ("City"), the County of Madera ("County"), Tesoro Viejo, Inc., Tesoro Viejo Master Mutual Water Company, and Rio Mesa Holding LLC enter into this agreement to settle and mutually release all claims with respect to the Action, as defined herein, on the terms and conditions set forth herein ("Agreement") dated May 8, 2013 ("Effective Date") as follows:

RECITALS

A. WHEREAS, the City filed a lawsuit against the County, and Tesoro Viejo, Inc., Tesoro Viejo Master Mutual Water Company, and Rio Mesa Holding LLC (collectively, "Tesoro Real Parties"), challenging the County's approval of the Tesoro Viejo Project on November 5, 2012 ("Tesoro Project"), Madera County Superior Court Case No. MCV062180 ("Tesoro Lawsuit" or "Action");

B. WHEREAS, the City, County, and Tesoro Real Parties are collectively referred to herein as "Parties";

C. WHEREAS, the Parties dispute the allegations and contentions raised in the Tesoro Lawsuit;

D. WHEREAS, the Parties have been engaged in negotiations to resolve issues with respect to the Tesoro Lawsuit;

E. WHEREAS, the Parties desire to resolve all aspects of the Tesoro Lawsuit, and not to proceed with further legal action upon the execution of this Agreement; and

NOW, THEREFORE, in consideration of the terms, conditions and covenants herein set forth, all Parties hereto agree as follows:

AGREEMENT

1. Payment to City

A payment of One Thousand Six Hundred Dollars (\$1,600.00) per each single family home for the first one thousand (1,000) single family homes constructed in the Tesoro Project shall be paid to the City ("Payment"). The total amount of the Payments made to the City under this Section shall not exceed One Million Six Hundred Thousand Dollars (\$1,600,000.00).

Each Payment shall be disbursed to the City at the time of the close of escrow for the sale of each single family home. The Tesoro Real Parties shall cause the escrow instructions for the sale of each single family home to include an instruction requiring that the Payment be made to the City at the close of escrow for each such home. The County will provide to the City quarterly updates on the number of single family residences in the Project for which

Certificates of Occupancy have been issued. This obligation to issue reports shall commence on the issuance of the first Certificate of Occupancy.

Fifty percent (50%) of the total amount of the Payments made to the City will be earmarked to be used for construction and/or maintenance of pedestrian, cycling and/or equestrian park and trail improvements that benefit the region.

Notwithstanding anything to the contrary in this Agreement, Tesoro Viejo, Inc. and Rio Mesa Holding LLC shall be jointly and severally liable for the Payment obligations under this Section 1. Tesoro Viejo, Inc. and Rio Mesa Holding LLC agree to pay to the City the full amount of any Payment that is not made in accordance with this Section 1. The obligations of Tesoro Viejo, Inc. and Rio Mesa Holding LLC under this Section 1 shall apply to their respective successors and assigns and to the member(s) and partner(s) of Rio Mesa Holding LLC if Rio Mesa Holding LLC and Tesoro Viejo, Inc. are dissolved.

2. Regional Planning Discussions

a. Within 60 days of the Effective Date, the City and County agree to commence and participate in good faith discussions concerning land use planning matters of mutual interest, facilitated by representatives of the State's Office of Planning and research and/or the Strategic Growth Council. Among other topics, these discussions should include (a) establishing data-driven modeling using agreed upon assumptions to measure the impacts of the City's and County's growth plans, (b) evaluating the capital and operating implications of those models, (c) considering a formula to provide sales tax equity for new developments that draw inequitably from one jurisdiction to the other, (d) and perhaps seeking State consideration for joint opportunities to address the city's and County's respective Regional Housing Needs Assessment (RHNA) obligations. It is anticipated that a series of meetings will occur at regular intervals over an agreed upon period of time and the City and County will involve the help of third party experts to conduct the data modeling and analysis. The City and County will be heavily involved in developing the inputs provided for the models. The City and County intend that this process be structured to the satisfaction of both parties.

b. Through these discussions, the City and County agree to seek creation of at least a 4-party regional planning entity (specific governance and jurisdiction to be defined), including the City, County, Fresno County Council of Governments, and Madera County Transportation Commission, to evaluate needs, impacts, and possible mitigations associated with the development of the Fresno/Rio Mesa growth area.

c. While it is premature to specify a program or fee level, this regional coalition will discuss and consider a "new" development" fee and mitigation program.

d. The City and County agree to pay \$15,000 each and to use best efforts to pursue additional funding for the cost of the facilitation and modeling described above in this Section.

e. The City and County agree to direct their professional staffs to hold regular (at

least quarterly) discussions of active land use initiatives and projects for purposes of mutual cooperation and understanding, and that meeting notes of such meetings shall be shared with the members of the County Board of Supervisors and Mayor/City Council of the City.

3. Dismissal of Action

The City shall execute, file, and serve a request for dismissal, with prejudice, of the Tesoro Lawsuit forthwith, but in no event later than ten (10) days after the Effective Date of this Agreement.

4. Mutual Release of Known and Unknown Claims.

Except for the obligations of the Parties which arise out of this Agreement, the Parties, and each of them, and each of their directors, officers, agents, limited and general partners, shareholders, employees, parents, subsidiaries, heirs, beneficiaries, affiliates, successors and assigns, do hereby release each other Party, and each of their directors, officers, agents, limited and general partners, shareholders, parents, subsidiaries, heirs, beneficiaries, affiliates, successors and assigns from all claims, causes of action, demands, liabilities, losses, costs, or damages of every kind and nature, whether based on tort, contract or any other theory of recovery, past, present or future, known or unknown, suspected or unsuspected, arising from or related to the Tesoro Lawsuit. The Parties hereto each acknowledge that they may hereafter discover facts different from or in addition to those they now know or believe to be true with respect to the claims, demands, causes of action, obligations, damages and liabilities of any nature whatsoever that are the subject of the Mutual Release set forth in this Agreement, and they each mutually agree to assume the risk of the possible discovery of additional or different facts and agree that this Agreement shall be and shall remain effective in all respects regardless of such additional or different facts. The parties acknowledge that this release does not in any way impair the right of any party to continue to prosecute existing or future CEQA litigation challenging projects other than the Tesoro Project nor does it adversely affect the right of any party to participate in the CEQA administrative process pertaining to any present or future project.

a. Waiver of California Civil Code Section 1542. The Parties, and each of them, understand the principles of California Civil Code section 1542, which provides that:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Each Party to this Agreement acknowledges that it is aware that it may hereafter discover facts in addition to or different from those which it now knows or believes to be true with respect to the subject matter of this Agreement, but that it is the intention of each Party to this

Agreement to hereby fully, finally and forever settle, release and discharge all claims, known or unknown, suspected or unsuspected, which now exist, may in the future exist, or heretofore existed between the Parties to this Agreement in connection with the Tesoro Lawsuit and hereby waives its rights under Civil Code Section 1542. In furtherance of such intention, the releases and discharges given herein shall be and shall remain in effect as full and complete releases and discharges notwithstanding the discovery or existence of any such additional or different facts.

City's Initials: *MB*

County's Initials:

Tesoro Real Parties' Initials:

5. **Miscellaneous**

a. **Benefit of Counsel/Consultant.** In entering into this Agreement, each Party represents and warrants that it is not relying on any representations, opinions, conclusions, recommendations, or opinions expressed by, provided by, or inferred from any other Party to this Agreement, any attorney for any other Party, or any other Party's experts, consultants, or agents. Each Party represents and warrants that it has been fully advised by its attorney concerning the effect and finality of this Agreement, and that the Party understands, without reservation or doubt, the effect and finality of this Agreement.

b. **Counterparts.** This Agreement may be executed in counterparts, and all so executed shall be binding upon all Parties hereto, notwithstanding that the signatures of the Parties' designated representatives do not appear on the same page.

c. **Representations and Warranties.** Each Party warrants that it is fully authorized to enter into this Agreement on behalf of itself and that each Party's signatory is authorized to sign on behalf of the Party.

d. **Governing Law.** This Agreement is entered into and shall be interpreted in accordance with the laws of the State of California without regard to any doctrine of choice or conflict of law.

e. **Costs and Attorneys' Fees.** The Parties acknowledge and agree that as to each other they are to bear their own costs, expenses, expert and consultant fees, and attorneys' fees arising out of the Tesoro Lawsuit, the negotiation, drafting, and execution of this Agreement, and all matters arising out of or connected therewith. Provided, however, if any dispute, controversy or action arises with respect to the interpretation or enforcement of this Agreement, the prevailing party shall be entitled to recover its legal fees and other costs of action.

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County's Initials: *MR*

Tesoro Real Parties' Initials:

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County's Initials:

Tesoro Real Parties' Initials:



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f. Construction of Agreement. This Agreement is the product of arms-length negotiations between the Parties and their respective attorneys. Each of the Parties hereto expressly acknowledges and agrees that this Agreement shall be deemed to have been mutually prepared so that the rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement.

g. Modifications. No change, modification or amendment of this Agreement shall be valid unless it is made in writing and signed by the Parties.

h. Stipulation of Non-Liability. All Parties recognize, acknowledge and agree that entry into this Agreement shall not be interpreted or construed as an admission of liability or a concession of any wrongdoing whatsoever. The parties further agree that the Payment was a result of negotiations between the City of Fresno and the Tesoro Real Parties and does not establish a basis to impose future fees.

i. Remedies. If any Party commences any action for the interpretation, enforcement, termination, cancellation or rescission, specific performance or breach of this Agreement, such action shall be brought in the Superior Court of the State of California for the County of Fresno. The Parties agree that the City or its officers, agents or employees shall not be liable in damages for any breach or violation of this Agreement. The Parties agree that the exclusive remedy against the City relating to this Agreement shall be by a legal action in mandamus, specific performance, or injunctive or declaratory relief.

j. Notices. All notices and other communications between the Parties required under this Agreement shall be in writing to the contact information provided below, as herein provided. Notices shall be deemed to have been duly given (i) if and when personally served, or (ii) three (3) days after deposit thereof in the United States mail, registered or certified, return receipt requested, postage prepaid, or (iii) one (1) business day after deposit with a nationally recognized overnight courier service, or (iv) via facsimile, effective on receipt of transmission confirmation if given during normal business hours, or the following business day if not, provided that a hard copy of such facsimile notice is sent on the same day via one of the methods of delivery set forth in subparagraphs (i) to (iii) foregoing. Any Party to receive notice hereunder may change or add its address for the purpose of receiving notices as herein provided by delivering notice in the manner aforesaid to all other Parties.

Title:
CITY OF FRESNO
Mark Scott
City Manager
2600 Fresno Street
Room 2064
Fresno, CA 93721

Ph. (559) 621-7770

Title:
COUNTY OF MADERA
Tanna Boyd
Clerk – Madera County Board of Supervisors
200 West 4th Street
Madera, CA 93637

Ph. (559) 675-7700
Fx. (559) 673-3302

f. Construction of Agreement. This Agreement is the product of arms-length negotiations between the Parties and their respective attorneys. Each of the Parties hereto expressly acknowledges and agrees that this Agreement shall be deemed to have been mutually prepared so that the rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement.

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2600 Fresno Street
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Fresno, CA 93721

Ph. (559) 621-7770

Title:
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Tanna Boyd
Clerk – Madera County Board of Supervisors
200 West 4th Street
Madera, CA 93637

Ph. (559) 675-7700
Fx. (559) 673-3302

With a copy to:

Norm Allinder
Planning Director
2037 E. Cleveland Ave.
Madera, CA 93637

Ph. (559)675-7821

Title:
TESORO VIEJO MASTER MUTUAL
WATER COMPANY
Brent McCaffrey
The McCaffrey Group
7020 N. Van Ness Blvd.
Fresno, CA 93711

Ph. (559)256-7000

Fx. (559)256-7010

Title:
TESORO VIEJO, INC.
Brent McCaffrey
The McCaffrey Group
7020 N. Van Ness Blvd.
Fresno, CA 93711

Ph. (559)256-7000

Fx. (559)256-7010

Title:
RIO MESA HOLDING LLC .
Brent McCaffrey
The McCaffrey Group
7020 N. Van Ness Blvd.
Fresno, CA 93711

Ph. (559)256-7000

Fx. (559)256-7010

k. Severability. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall remain in full force if the legal substance of the settlement that this Agreement contemplates is not affected in any manner adverse to any Party.

l. Integration. This Agreement constitutes the entire agreement between the Parties, with respect to the subject matter hereof, and supersedes all discussions, agreements and understandings, both written and oral, among the Parties with respect hereto.

m. Cooperation and Additional Documents. The Parties agree to cooperate with one another to effectuate all aspects of this Agreement. Each of the Parties also agrees to execute and deliver to each of the other Parties all additional documents, instruments and agreements and to take such additional actions as are required to implement the terms and conditions of this Agreement.

n. Acknowledgment of No Assignment. The Parties each warrant that they have

ATTORNEY-CLIENT PRIVILEGE. CONFIDENTIAL. PRIVILEGED SETTLEMENT COMMUNICATION.

made no assignment, and will make no assignment of any claim, choice in action, right of action or any right of any kind whatsoever, embodied in any of the claims and allegations referred to herein, and that no other person or entity of any kind had or had any interest in any of the demands, obligations, actions, causes of action, debts, liabilities, rights, contracts, damages, attorneys' fees, costs, expenses, losses or claims referred to herein.

o. Binding Upon Successors. This Agreement shall be and is binding upon and inures to the benefit of the Parties hereto, and to their respective successors, assigns, parent companies, subsidiaries, and affiliates.

p. No Third Party Beneficiaries. This Agreement is made and entered into for the sole benefit of the parties and their successors in interest. No other person or party, including but not limited to purchasers, owners or residents of individual homes within the Project, shall have any right of action based upon any provision of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives.

CITY OF FRESNO

By: Mark Scott
Mark Scott
Its: City Manager

Date: May 8, 2013

APPROVED AS TO FORM

By: Douglas T. Sloan
Douglas T. Sloan
City Attorney

COUNTY OF MADERA

By: _____
Name: _____
Its: _____

Date: _____

APPROVED AS TO FORM

By: _____
Name: _____
Title: _____

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CITY OF FRESNO

By: _____ Date: _____
Name: _____
Its: _____

APPROVED AS TO FORM

By: _____
Name: _____
Title: _____

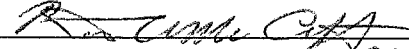
COUNTY OF MADERA

By: Max Rodriguez Date: 5/7/2013
Name: Max Rodriguez
Its: Chairman

APPROVED AS TO FORM

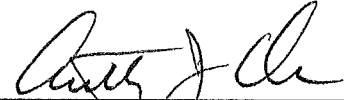
By: Douglas W. Nelson
Name: Douglas W. Nelson
Title: County Counsel

TESORO VIEJO, INC.


By: 
Name: ROBERT A. MCCAFFREY
Its: MANAGER

Date: 5/17/13

APPROVED AS TO FORM

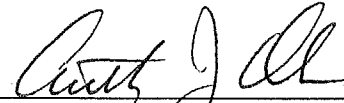
By: 
Name: Anthony J. Olive
Title: Attorney

TESORO VIEJO MASTER MUTUAL
WATER COMPANY


By: 
Name: ROBERT A. MCCAFFREY
Its: PRESIDENT

Date: 5/17/13

APPROVED AS TO FORM


By: 
Name: Anthony J. Olive
Title: Attorney

RIO MESA HOLDING LLC

By: 
Name: ROBERT A. MCCAFFREY
Its: MANAGER

Date: 5/17/13

APPROVED AS TO FORM

By: 
Name: Anthony J. Olive
Title: Attorney